

P-999/R-87-358ADOPTING RULE AMENDMENTS

STATE OF MINNESOTA  
PUBLIC UTILITIES COMMISSION

In the Matter of the Proposed Rule  
Amendments Governing the Telephone  
Assistance Plan, Minn. Rules, parts  
7817.0100 to 7817.1000.

ISSUE DATE: January 31, 1989

DOCKET NO. P-999/R-87-358

FINDINGS OF FACT, CONCLUSIONS, AND  
ORDER ADOPTING RULE AMENDMENTS

The above-entitled matter came on for decision before the Minnesota Public Utilities Commission (Commission) on the 17th day of January, 1989. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the Commission, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering the Statement of Need and Reasonableness, after considering all of the evidence adduced upon the records, files and proceedings herein, the Commission, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions, and Order:

FINDINGS OF FACT

1. Notice of the Commission's intent to adopt the above rules without a public hearing was published in the State Register on November 14, 1988, and was sent by mail to all persons on the list maintained by the Commission pursuant to Minn. Stat. sections 14.14, subd. 1a and 14.22 (1988) on November 1, 1988.
2. The Statement of Need and Reasonableness was prepared prior to mailing and publication of the notice and was made available to the public on October 28, 1988.
3. All persons were given the opportunity to submit comments on the rule for 30 days after notice of proposed rulemaking. The 30 day comment period, as set out in the notice, expired on December 14, 1988.
4. No requests for public hearing were received during the comment period.
5. No requests for notice of submission to the Attorney General were received by the Commission.
6. During the comment period the Commission received written comments from Northwestern Bell Telephone Company and the Minnesota Board on Aging:

a. Northwestern Bell Telephone Company (NWB)

NWB agreed with the proposed TAP rule amendments. NWB also agreed that very small telephone companies should be allowed to file only an annual report. See Finding No. 8.

b. Minnesota Board on Aging (MBA)

The MBA supported the proposed TAP rule amendments.

7. During the comment period the Commission also received oral comments from Teleplus Consulting, Inc. and the Minnesota Department of Human Services:

a. Teleplus called to question whether the proposed amendment to the definition of "telephone company" was intended to include resellers of telephone service in the TAP rules.

The proposed TAP rule amendment states:

Subp. 16. Telephone company. "Telephone company" has the meanings given it in Minnesota Statutes, section 237.01, subdivisions 2 and 3, and also means a company that provides local exchange ~~telephone~~ service.

The TAP rule definition of "telephone company" incorporates the statutory definition of telephone company by reference, as does the TAP law. See Minn. Stat. section 237.69, subd. 4 (1988). The language "and also means a company" was added to the rule to clarify the legislative intent that TAP apply only to telephone companies that provide local exchange service.

The proposed rule amendment also removes the word "telephone" from the phrase "local exchange telephone service". This amendment was necessary to make the phrase consistent with the TAP rule definition of "local exchange service" in proposed part 7817.0100, subpart 10.

The Commission finds that the proposed rule was amended to exclude long distance telephone companies from the TAP rules because the TAP law only applies to local telephone companies. Therefore, long distance resellers are excluded from the TAP rule definition of "telephone company". Moreover, the proposed TAP rule amendment was not used as an indirect vehicle for regulating resellers of local telephone service as telephone companies.

The resale and sharing of local telephone service is being addressed in rulemaking Docket No. P-999/R-88-357. The Commission formed an Advisory Task Force to examine what types of rules are necessary for resellers and sharers of local telephone service.

One of the issues being considered by the Advisory Task Force is the role of resellers and sharers of local telephone service in TAP. For instance, the Task Force is examining how the cost of providing TAP benefits should be borne by the resellers and sharers of local telephone service and the end use customers.

For this reason, the Commission finds that the proposed TAP rule definition need not be modified to specifically include or exclude resellers and sharers of local telephone service. The role of the resellers and sharers of local telephone service in TAP will be resolved in the Commission's rulemaking proceeding in Docket No. P-999/R-88-357.

b. Department of Human Services (DHS)

The Appeals Division of the DHS called to verify that no amendments to the appeals part of the TAP rules were proposed.

8. The Commission finds that modifications to the proposed rules are justified by the record in this proceeding, as follows:

At its December 22, 1988 meeting, the Advisory Task Force recommended several modifications to the proposed TAP rule amendments. The Advisory Task Force consists of representatives of the affected state and local agencies, telephone companies, and citizen groups. The recommended modifications are underlined.

7817.0900 COMPANY RECORDING, REPORTING REQUIREMENTS.

Subp. 2. Reporting requirements. A telephone company shall file at its option either quarterly or monthly reports with the commission and the Department of Public Service for review. A telephone company with 100 or fewer subscribers may file an annual report under subpart 4 rather than filing quarterly or monthly reports. Quarterly reports are due no later than 30 days after the end of each calendar month. The reports must be made on a form prescribed by the commission.

Subp. 4. Annual report. No later than 30 days after the end of a calendar year, a telephone company shall file a year-end report with the commission and the Department of Public Service. A telephone company with 100 or fewer subscribers that files only an annual report must include the information required by subpart 3 in its annual report. Depending on the reporting option chosen under subpart 2, a cumulative year-end monthly or quarterly report provided under subpart 3 may serve as the annual report. This report must be a financial report and accounting for the telephone company's experience under the telephone assistance plan. The report must also be adequate to satisfy the reporting requirements of the federal matching plan.

The Commission finds that these modifications are needed because telephone companies with 100 or fewer subscribers collect minimal TAP revenues and, in some cases, have no

subscribers eligible for the TAP credit.

For instance, a company with 50 subscribers may collect as little as \$60.00 per year in TAP revenues ( $50 \times \$0.10 \times 12 = \$60.00$ ). This same company may have no TAP beneficiaries so it has no incentive to request TAP reimbursements because it is due none. Under the current TAP rules, such a company must file its TAP report quarterly. Quarterly revenues collected would equal only \$15.00 ( $\$60.00 / 4 = \$15.00$ ). This small sum is hardly worth the time and expense it takes to complete the report form and prepare a check.

Allowing small telephone companies to report only annually is a reasonable way to relieve this unnecessary administrative burden. Telephone companies are required by the TAP law to account to the Commission periodically and provide the Commission and the Department of Public Service with a financial report. See Minn. Stat. section 237.70, subd. 7 (1988). Since a report is necessary, an annual report is reasonable because it fulfills the statutory requirements while still reducing the burden on small telephone companies to report quarterly.

Minn. Rules, part 2010.1000, of the Office of the Attorney General requires it to disapprove a rule that is substantially different from the proposed rule as noticed.

The Commission finds that these modifications do not affect classes of persons who could not reasonably have been expected to comment on the proposed rule as originally noticed because the small telephone companies are affected and they were noticed that they would be affected. Similarly, the issue of how often telephone companies must file reports was raised by the originally noticed rule and, therefore, the modifications does not introduce significant new subject matter. Finally, allowing small telephone companies to file only annual reports is not a major substantive change that was not raised by the proposed rule as originally noticed in such a way as to invite reaction.

For these reasons, allowing small telephone companies to file only an annual report is needed and reasonable and would not result in a substantial change from the proposed rule amendments.

9. The Commission adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the proposed rules. The Commission hereby incorporates the Statement of Need and Reasonableness into these findings except as modified in Finding No. 8 above.
10. The above-captioned rule is needed and reasonable.

### CONCLUSIONS

1. The Minnesota Public Utilities Commission duly acquired and has jurisdiction over this proceeding pursuant to Minn. Stat. section 237.711 (1988).
2. The Commission published and served due, timely, and adequate notice of the intent to adopt the rules without a public hearing.
3. The Commission has complied with all relevant legal and procedural requirements of statute and rule.
4. The modifications to the proposed rules are supported by the record and do not result in a substantial change in the proposed rule.

ORDER

1. The Commission hereby adopts the amendments to Minn. Rules, parts 7817.0100 to 7817.1000, governing the Telephone Assistance Plan.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen  
Executive Secretary